

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUL 7 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 95-31
)
Reexamination of the Comparative)
Standards for Non-Commercial)
Educational Applicants)

To: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION
OF
COLORADO CHRISTIAN UNIVERSITY

Colorado Christian University ("CCU"), by its attorney, pursuant to Section 1.106 of the Commission's rules, hereby respectfully requests reconsideration of the Commission's Report and Order in the captioned matter (FCC 00-120, released April 21, 2000 (the "Order").

CCU generally agrees with the Commission's decision to apply a point system to award authorizations to mutually exclusive non-commercial educational applicants.¹ Yet, CCU is concerned over a fundamental inconsistency, a procedural problem, and two areas which warrant further definition.

I. Awards resulting from a Section 307(b) threshold determination should be subject to a four year holding period.

The Commission has recognized that any selection procedure based upon paper proposals is

¹ Indeed, CCU is gratified that the specific details of the procedures outlined in the Order generally adhere to and often cite CCU's suggestions, as advanced in its comments of January 28, 1999 and reply comments of March 15, 1999.

No. of Copies rec'd 0+9
List A B C D E

prone to abuse (Order at paragraph 93). To ensure adherence to promises upon which selections are made, the Commission wisely adopted a four-year holding period during which relevant criteria would have to be maintained (Order at paragraph 93). Yet, the Commission specifically applied this holding period only to awards based upon points and exempted authorizations made through a decisive Section 307(b) preference (Order at paragraph 93).² There is no reason for this exemption; indeed, it threatens to defeat the very purpose of the rule.

Under the Commission's Order, a Section 307(b) preference is, if anything, more important than an award based solely upon points, for the very reason that such a preference is a threshold issue that obviates the need for a comparison based upon points. (Order at paragraph 27). However, Section 307(b) preferences are based upon the same type of paper promises as is the technical parameter criterion for which points are to be awarded. (Order at paragraph 37).³ The Commission recognizes the need to ensure implementation of Section 307(b) proposals by prohibiting downgrading of service to the proposed areas within a four year period. (Order at paragraph 27). Yet, there remains the need to ensure that any application granted due to a decisive preference, whether technical or otherwise, not be permitted to use the awards for speculative purposes. Indeed, the Commission states generally: "We believe that if applicants are to be selected on the basis of their different characteristics, those characteristics should be maintained for a minimum period to be meaningful." (Order at paragraph 93). It makes little sense to require a holding period for an award based solely

² Under the Commission's selection procedures, a Section 307(b) preference is to be granted to applicants providing a first or second non-commercial educational service to at least 10% of the population within their 60 dBu service contours, comprising at least 2,000 people; comparisons between two or more such applicants would require a difference of at least 5,000 people. (Order at paragraph 25).

³ Under the point system, one, and occasionally two, points are to be awarded for substantially larger coverage of area and population. (Order at paragraphs 37-40).

upon points, but to exempt awards based upon a Section 307(b) preference that the Commission deems to be so much more fundamental that it overrides the need for a comparison based upon points altogether. Instead, the Commission needs to ensure a consistent approach, whereby any award based upon a decisive preference – whether points or Section 307(b) – be subject to the same holding period of four years.

II. Procedures to ensure that Section 307(b) claims are based upon legitimate communities of license.

Due to the overriding importance of Section 307(b), the Commission must take specific steps to ensure that a claimed community is valid in that it meets the Commission’s criteria for the award of a broadcast license. Apparently, the Commission seems willing to accept an applicant’s claim for valid community status, subject only to the possibility of a petition to deny to be filed after a tentative selectee is identified. (Order at paragraph 90). Yet, it will unduly delay service and will waste the Commission’s and the applicants’ resources to require a comparison based upon a community which does not meet the Commission’s criteria.⁴ As an example, CCU is involved in at least one proceeding in which it is mutually exclusive with an applicant who has filed a blatantly defective application which specifies a railroad junction as the purported community of license. CCU has filed a petition to deny against that applicant, which remains pending and, presumably, under the proposed rules would be

⁴ This assumes that a Section 307(b) preference can be based upon a first transmission service license to a community. The Commission’s Order and Section 73.7002 of the rules seem somewhat unclear as to this point. Section 73.7002(a) couches a threshold issue in terms of applications that “will serve different communities.” It is unclear whether Section 73.7002(b) creates an independent selection criterion based upon service received, or whether it is intended to amplify Section 73.7002(a) so as to obviate the transmission component of a traditional Section 307(b) analysis altogether.

handled only after a selection were made based upon Section 307(b) or points. CCU urges that this is an inefficient use of the Commission's resources and unduly delays service to the public. Proof of community status should be required in an acceptability study, perhaps subject to documentation, as the Commission has already provided in paragraphs 89 and 90 of the Order with respect to claims for eligibility for points. If a specified community is manifestly unlicenseable, then an application proposing such a community should be summarily dismissed without the need to subject the parties to delay pending a wholly unnecessary comparison.

III. The effective date for 307(b) determinations.

Both the new rule and the Order are silent as to when the facts used to analyze a Section 307(b) determination should be deemed "frozen." In light of the length of time which many mutually exclusive applications have been pending awaiting promulgation of the Commission's comparative criteria, it is only fair for that determination to be made as of some future date so as to best ensure Commission needs for administrative finality and to avoid a "moving target" for evaluation, while at the same time implementing the Congressional purpose of Section 307(b), which is to provide a realistic determination of present service needs. CCU suggests that the appropriate date should be the one upon which the staff determines which applications are mutually exclusive. Any earlier date (such as the date a pending application was filed or cut-off) will lead to situations in which facility changes may have since obviated the need for a Section 307(b) preference and would create awards based upon an outdated fiction rather than present reality. The date we are suggesting is as late as possible so as to best reflect current needs, yet is fair to all applicants, both long-pending and more recent.

IV. The determination of a “state-wide network”.

One of the definitions of a state-wide network (given in Section 73.7003(b)(3)(b)) requires a minimum of five full-time campuses within a single state encompassed by the combined primary service contours of the one proposed and other existing stations. CCU has found that the combination of an NCE station and a full-time campus offering accredited degrees has been very effective in meeting the educational needs of Colorado’s communities. CCU currently has five campuses and is attempting to provide a station for each campus while the institution’s educational program is also growing into new geographic areas in Colorado. The currently proposed Criterion (b) under “state-wide network” does provide credit for “combined primary service contours of the proposed station and its existing stations(s).” However, it does not provide credit for primary service contours of the applicant’s other proposed stations in the same state that have been effectively “locked up” pending the implementation of appropriate selection criteria. Thus we are recommending the following change:

(b) an accredited public or private institution of higher learning with a minimum of five full time campuses within a single state encompassed by the combined primary service contours of the proposed station(s) and its existing station(s),...”

The same definition further requires that the existing stations be a part of the applicant’s curriculum. We do not believe that this element is needed to achieve the Commission’s purpose of ensuring that such stations provide focused educational benefits (Order, paragraph 60). We have found that a very high percentage of adults are enrolled in our adult degree programs as a direct result of listening to the University’s radio programs, which often highlight a University faculty member sharing the importance of continued life-long advancement education that results in a degree. Every CCU campus in the vicinity of a CCU radio station has experienced about 60% - 75% of its adult

students who graduate with a baccalaureate degree were attracted to the educational program as a direct result of hearing about it on their CCU radio station. Therefore, CCU submits that in its experience it is able to extend the type of positive accredited educational impact to a community even though students at a given campus were not necessarily required to listen to one of its stations as part of their curriculum. However, the currently proposed Criterion (b) does not allow for that educational benefit to count toward a state-wide network. Thus, CCU is proposing an additional clause to Criterion (b) as follows:

“...if the existing station(s) are regularly providing programming to campuses in furtherance of their curriculum or are regularly providing programming in furtherance of the educational impact of the institution in meeting the educational needs in their local communities, and the proposed station will increase the number of campuses it will regularly serve; or”

Conclusion. In light of the foregoing, CCU respectfully requests that the Commission reconsider its comparative standards for non-commercial educational applicants, as announced in its Order, so as to:

- Require that authorizations awarded as the result of decisive Section 307(b) preferences be held for a minimum of four years.
- Provide a procedure by which claims for a first transmission service to a community would be evaluated before tying others up in mutually exclusive situations.
- Determine Section 307(b) threshold eligibility as of the final date for amendments to a *pending application*; and

- Modify the definition of a “state-wide network” to include proposed stations within the five-campus threshold and to not limit eligibility to entities broadcasting their curricula over their stations.

Respectfully submitted,

COLORADO CHRISTIAN UNIVERSITY

By: 
Peter Gutmann, Its Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202)296-0600

July 7, 2000

PG/rsm
I:\wp\1523\petition for reconsideration.doc